

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

File No. 1:07-CV-00953

| | | |
|--------------------------------|---|----------------------------|
| RYAN MCFADYEN, MATTHEW WILSON, |) | |
| and BRECK ARCHER, |) | |
| |) | |
| Plaintiffs, |) | DEFENDANT BENJAMIN |
| |) | HIMAN'S MOTION TO |
| vs. |) | DISMISS PLAINTIFFS' |
| |) | SECOND AMENDED |
| DUKE UNIVERSITY, et al., |) | COMPLAINT |
| |) | |
| Defendants. |) | |

Defendant Benjamin Himan ("Investigator Himan"), through his undersigned attorneys, moves pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing this action in its entirety as to this Defendant upon the grounds that the Second Amended Complaint fails to state a claim upon which relief may be granted and, in the alternative, that all claims asserted against Investigator Himan are barred by the doctrines of qualified and public officer immunity.

In support of this motion and pursuant to this Court's February 16, 2010 Order, document #135, Investigator Himan hereby incorporates by reference the following previous arguments and authorities in this case:

Defendant Benjamin Himan's Motion to Dismiss, filed July 2, 2008, document #51;

Defendant Benjamin Himan's Brief in Support of Motion to Dismiss, filed July 2, 2008, document #52;

Defendants Benjamin Himan and Mark Gottlieb's Joint Reply in support of Motion to Dismiss, dated November 26, 2008, document #106;

Supplemental Brief in Support of Motions to Dismiss of Defendants Gottlieb, Himan and The City of Durham, North Carolina, filed June 24, 2009; document #123; and

Suggestion of Subsequently Decided Authority, filed January 7, 2010, document #134.

WHEREFORE, Defendant Benjamin Himan respectfully prays the Court that:

1. The Action against him be dismissed;
2. Judgment be entered for Defendant Benjamin Himan on all claims against him;
3. Plaintiffs have and recover nothing from Defendant Benjamin Himan; and
4. Defendant Benjamin Himan have such other and further relief as the Court shall deem just and proper.

This the 11th day of March, 2010.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that I electronically filed the foregoing Defendant Benjamin Himan's Renewed Motion to Dismiss with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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This the 11th day of March, 2010.

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